POLICY ANALYSIS

The Total Ban Question

When Counties Consider Banning Grid-Scale Energy Projects and Data Centers Outright — and How to Decide

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The question before many rural counties is not simply whether they want these projects — it is whether a blanket prohibition is the right legal and civic tool, or whether a regulated approval process with enforceable standards serves the community better. This article examines both sides and offers a scoring framework to guide that decision.

I. The Stakes Have Changed

Grid-scale energy facilities — utility solar, wind, battery storage, and transmission infrastructure — along with hyperscale data centers are no longer an abstract future prospect for rural American counties. They are arriving now, often with hundreds of millions in capital, favorable state legislation, and national policy tailwinds behind them. Counties that have not built a regulatory framework find themselves with a binary choice: approve projects under general zoning standards never designed for them, or attempt to stop them entirely.

The total ban is not a new idea in land use law. Counties routinely exclude certain uses from their jurisdiction or limit them to specific zones. But banning an entire category of infrastructure at the county level raises distinct legal, practical, and civic questions — especially when state law may compel siting, federal policy favors deployment, or the community genuinely needs the economic activity these facilities provide.

This analysis does not advocate for or against any particular project. It asks a more fundamental question: under what conditions is a total ban justified, and how should a county measure whether it has reached that threshold?

II. The Legal Landscape

State Authority and the Limits of Local Control

County zoning authority flows from state enabling legislation. In Idaho, the Local Land Use Planning Act (LLUPA), Idaho Code §§ 67-6501 through 67-6535, grants counties broad authority to regulate land use but also imposes procedural and substantive constraints. A county cannot simply declare that no energy facility will

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ever be permitted. Any exclusionary ordinance must be grounded in a comprehensive plan, supported by findings, and defensible against constitutional and statutory challenges.

Key legal risks associated with a total ban include:

- Preemption challenges, particularly if state law establishes a siting process that limits local exclusion.
- Constitutional takings claims if a ban effectively eliminates the economic use of property already designated for industrial or agricultural use.
- Equal protection and due process challenges if the ban appears targeted at specific applicants or technologies.
- Federal supremacy arguments in the case of transmission lines, federally-permitted generation, or facilities on federal land.

What a County Can Legitimately Prohibit

Courts have generally upheld local exclusions of particular uses when those exclusions are grounded in rational planning rationale, applied uniformly, and do not conflict with state law. Counties retain the strongest ground when:

- The comprehensive plan identifies the excluded use as incompatible with the county's vision, character, or resource base.
- The ordinance applies to all projects of the type — not to specific applicants.
- The record documents the rationale: infrastructure constraints, agricultural preservation, water supply limits, or community character.
- State law does not explicitly compel approval or limit the county's ability to exclude.

> *A ban that cannot survive a legal challenge is not a protection. It is an expensive delay that ends with the same outcome, minus the county's legal budget.*

III. The Case for a Total Ban

There are legitimate conditions under which a total ban is the most defensible policy choice. Counties should not dismiss this option reflexively. In the right circumstances, it is sound governance.

1. Infrastructure Cannot Support It

Grid-scale facilities and data centers make extraordinary demands on water, power, roads, and emergency services. A county whose infrastructure — water rights, transmission capacity, road weight limits, or emergency response capability — is genuinely insufficient to serve these uses without unacceptable public cost or risk has a legitimate basis for exclusion.

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The key test is whether the infrastructure gap is real and documented, not merely asserted. Engineering assessments, water availability studies, and transmission capacity analyses provide the foundation for this finding.

2. The Agricultural Resource Base Is Irreplaceable

Many rural counties exist as productive agricultural economies precisely because of the soil, water, and climate conditions present in specific geographic areas. The Magic Valley of southern Idaho, for example, supports one of the most productive dairy and potato production regions in the United States. When a facility type's land requirements directly compete with and permanently convert prime agricultural land, and when that land cannot be replaced, a county has a compelling interest in protection that goes beyond aesthetics or preference.

This argument is strongest when the county can document the agricultural productivity at stake, the irreversibility of conversion, and the absence of viable alternative sites within the county.

3. Cumulative Impact Exceeds Local Capacity

A single facility may be manageable. Five, ten, or twenty may not be. If a county sits in a region targeted for large-scale development — favorable solar or wind resources, cheap land, proximity to transmission — the realistic scenario is not one project but a wave. Cumulative impacts on water, traffic, viewshed, agricultural operations, and community character may collectively exceed what regulated approval can adequately address.

4. The Regulatory Capacity Does Not Exist

Smaller counties with limited planning staff may genuinely lack the capacity to evaluate complex energy or data center applications. If a county cannot realistically conduct independent technical review, cannot afford outside expertise, and cannot enforce conditions of approval, a regulated process may be worse than a prohibition — because approvals will be issued without meaningful oversight.

This is an uncomfortable argument, but it is honest. A county that approves projects it cannot evaluate is not protecting the public interest.

IV. The Case Against a Total Ban

For most counties in most circumstances, a well-designed conditional use or special use permit process is a better tool than an outright ban. The reasons are practical, legal, and civic.

1. Bans Eliminate Legitimate Economic Opportunity

Rural counties face persistent pressures: declining agricultural employment, population loss, shrinking tax bases, and underfunded services. Grid-scale energy and data center facilities can bring significant assessed valuation, local tax revenue, construction employment, and — in some cases — permanent jobs. A total ban

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eliminates these benefits categorically, with no consideration of whether a specific project might be compatible with community goals.

2. Regulated Approval Is a More Powerful Tool

A robust conditional use permit process with clear technical standards gives a county far more control than a ban. With the right standards in place, a county can require decommissioning bonds, set noise and setback requirements, mandate agricultural mitigation, limit facility size, establish water use caps, and require emergency response agreements. A ban removes all leverage. A permit process retains it.

3. Legal Exposure Is Real

As noted above, a ban that cannot survive challenge is a policy failure. Litigation is expensive, distracting, and corrosive to public trust regardless of the outcome. If a county lacks the legal basis for an exclusion, a regulated framework with high standards is less vulnerable and more durable.

4. Technology and Community Needs Evolve

A ban enacted today may foreclose options that become important in ten or twenty years. Battery storage systems that look industrial-scale today may evolve into distributed assets compatible with agricultural landscapes. A community energy project proposed by local farmers may be prohibited under the same ordinance that was written to stop an out-of-state hedge fund. Categorical exclusions are blunt instruments.

> *The right question is not 'should we allow these things' but 'what standards must a project meet to earn approval, and what conditions can we not mitigate at all'? The answer to the second part of that question is where a ban may be justified.*

V. Factors That Should Drive the Decision

Whether a county is considering a ban or designing a regulatory framework, the following factors are the ones that matter most. Each should be assessed honestly, documented thoroughly, and weighed against the others.

Factor 1: Infrastructure Capacity

- Water rights availability and aquifer sustainability
- Electrical transmission capacity and grid interconnection feasibility
- Road network capacity, weight limits, and transportation corridor constraints
- Emergency services response capability and mutual aid agreements
- Wastewater and stormwater infrastructure

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Factor 2: Agricultural Land and Resource Protection

- Percentage of prime or unique farmland in the county
- Presence of irrigation infrastructure tied to specific parcels
- Extent of active farming operations in target development areas
- Availability of non-agricultural alternative sites
- Reversibility of land conversion under proposed development types

Factor 3: Economic Conditions

- County assessed valuation trend and fiscal stability
- Employment diversity and vulnerability to sector-specific shocks
- Local business ecosystem capacity to capture secondary benefits
- Existing economic development commitments and conflicts

Factor 4: Community Character and Planning Consistency

- Whether the comprehensive plan addresses these facility types
- Degree of community consensus expressed through public process
- Proximity of proposed development areas to residential communities
- Visual, acoustic, and operational compatibility with adjacent uses

Factor 5: Regulatory and Legal Capacity

- Availability of planning and legal expertise to evaluate applications
- Track record on complex conditional use permit enforcement
- State law constraints on exclusion or denial
- Risk tolerance for litigation and its fiscal consequences

Factor 6: Cumulative and Regional Impact

- Number and scale of projects already approved or under application countywide
- Regional development pressure and proximity to siting corridors
- Cumulative water consumption relative to total rights
- Coordinated impact on neighboring counties and shared resources

VI. The County Siting Posture Metric (CSPM)

To move from qualitative factors to a structured decision process, counties should use a standardized scoring framework. The County Siting Posture Metric (CSPM)

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generates a score from 0 to 100 that indicates where a county sits on the spectrum from “open for regulated development” to “ban justified.”

The CSPM is not a formula that produces a binding answer. It is a structured discipline that forces counties to assess each factor honestly, document the basis for each score, and arrive at a defensible posture. The process of completing it is as valuable as the score itself.

Scoring Dimensions

Each of the six dimensions below is scored from 0 (no concern) to 10 (critical constraint), then multiplied by a weighting factor based on its relative policy significance. The maximum weighted score for each dimension reflects its weight in the final 100-point scale.

Dimension	Weight	What Is Being Measured
Infrastructure Capacity	× 2.5	Water, power, roads, emergency response — can the county physically support these uses without unacceptable public cost or risk?
Agricultural Protection	× 2.0	Is irreplaceable farmland or irrigation infrastructure at genuine risk of permanent conversion?
Regulatory Capacity	× 1.5	Does the county have the staff, expertise, and legal standing to evaluate, condition, and enforce complex project approvals?
Community/Plan Alignment	× 1.5	Does the comprehensive plan address these uses? Has the community expressed a clear preference through legitimate public process?
Economic Conditions	× 1.5	Does the county have alternatives to this type of development? Would exclusion cause serious fiscal harm?
Cumulative/ Regional Pressure	× 1.0	How much development pressure already exists or is anticipated? Is the county at or near a saturation point?

Scoring Guide for Each Dimension

Score each dimension from 0 to 10 using the following anchors. Intermediate scores reflect proportional concerns.

Infrastructure Capacity (weight × 2.5)

- **No meaningful constraints. Infrastructure can accommodate these facility types with standard permitting.** 0–2:
- **Moderate constraints exist but are addressable through conditions of approval or developer-funded improvements.** 3–5:

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- **Significant gaps in water, power, roads, or emergency services that cannot be fully mitigated by project conditions.** 6–8:
- **Critical infrastructure deficits. Approval of these facilities would impose unacceptable public costs or create genuine safety risks.** 9–10:

Agricultural Protection (weight × 2.0)

- **Little or no prime farmland in proposed development areas; viable non-agricultural alternatives exist.** 0–2:
- **Some prime farmland present; mitigation through siting standards or agricultural buffers is feasible.** 3–5:
- **Significant prime farmland or irrigation infrastructure at risk; alternative sites are limited.** 6–8:
- **Irreplaceable agricultural land, water rights, or infrastructure systems directly threatened; no viable alternatives.** 9–10:

Regulatory Capacity (weight × 1.5)

- **County has experienced staff, access to technical expertise, and a strong track record on complex CUP enforcement.** 0–2:
- **County has moderate capacity; can manage complex applications with outside assistance.** 3–5:
- **Limited staff and expertise; track record on complex enforcement is weak; legal budget is constrained.** 6–8:
- **County genuinely cannot evaluate these applications or enforce conditions; approvals would be issued without meaningful oversight.** 9–10:

Community/Plan Alignment (weight × 1.5)

- **Comprehensive plan addresses these uses and community sentiment is neutral or supportive.** 0–2:
- **Plan is silent or ambiguous; community sentiment is mixed with no clear mandate.** 3–5:
- **Plan is inconsistent with these uses; substantial community opposition documented through public process.** 6–8:
- **Plan explicitly discourages or opposes these uses; community has clearly and consistently opposed them.** 9–10:

Economic Conditions (weight × 1.5)

- **County has a strong, diversified economy; is not fiscally dependent on this development type.** 0–2:
- **County is economically stable but would benefit from additional assessed valuation and employment.** 3–5:

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- **County faces fiscal stress; exclusion of these uses would meaningfully harm the tax base.** 6–8:
- **County is in serious fiscal distress; these projects represent a significant economic lifeline.** 9–10:

Note: High scores here argue against a ban, not for one. Invert this dimension when aggregating: use (10 − raw score) × 1.5 for the weighted contribution.

Cumulative/Regional Pressure (weight × 1.0)

- **Little development pressure; county is not a regional target; few applications pending or anticipated.** 0–2:
- **Moderate pressure; several applications have been filed; regional interest is growing.** 3–5:
- **High pressure; county is in a recognized siting corridor; multiple large-scale projects are in the pipeline.** 6–8:
- **Saturation pressure; the cumulative footprint of pending or approved projects approaches or exceeds sustainable limits.** 9–10:

Calculating and Interpreting the CSPM Score

Apply the formula below. For the Economic Conditions dimension, use the inverted score (10 − raw) to reflect that economic need argues against a ban.

CSPM Score Formula

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CSPM = (Infrastructure × 2.5) + (Agriculture × 2.0) + (Regulatory
Capacity × 1.5) +
         (Community Alignment × 1.5) + ((10 − Economic Score) × 1.5) +
(Cumulative Pressure × 1.0)
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Maximum possible score: 100

CSPM Score Thresholds

Score Range	Posture	Recommended Response
0 – 24	Open for Development	Design a standards-based conditional use permit framework. Welcome applications. Focus on conditions that protect local interests.
25 – 44	Conditional Development	Develop a CUP process with strong technical standards. Consider tiered classification by facility size. Require independent technical review of applications.
45 – 64	Highly Restricted	Limit permitted areas through overlay districts or agricultural preservation zones. Establish a moratorium

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		while comprehensive plan amendments are completed. Require extraordinary findings for approval.
65 – 79	Presumption Against Approval	Default posture is denial unless applicant demonstrates exceptional public benefit and fully mitigates all identified harms. Comprehensive plan should be amended to reflect this posture.
80 – 100	Ban Justified	The evidence base is sufficient to support a blanket prohibition. Proceed with ordinance development, ensure legal review, document the record thoroughly, and amend the comprehensive plan to reflect the exclusion.

Important: No single dimension score should automatically trigger a ban. A 10 on infrastructure capacity in a county with a strong economy and functioning regulatory system presents a very different policy question than a 10 on infrastructure in a county that also scores 9 on regulatory capacity and 8 on agricultural protection.

VII. The Process Matters as Much as the Score

Whatever score a county generates using the CSPM, the process by which it arrives at that score is itself a form of governance. The following principles should guide the process:

Document Everything

Every score assigned to every dimension should be supported by a written finding. Engineering assessments, agricultural surveys, legal opinions, public testimony transcripts, and infrastructure capacity studies are not just useful — they are the county's defense if the ordinance is challenged. A well-documented record is worth more than any particular policy outcome.

Use the Public Process, Not Instead of It

The CSPM is a tool for structuring deliberation, not for replacing it. Public hearings, planning commission review, and elected official accountability remain essential. The metric helps ensure that public deliberation is focused on the right questions and that decisions are grounded in evidence rather than reaction.

Revisit the Score Periodically

Conditions change. Infrastructure gets built or deteriorates. Economic conditions shift. Agricultural operations come and go. A CSPM score calculated today may not reflect the county's situation in five years. Counties should build a review cycle into their ordinances and revisit the scoring at regular intervals or when material conditions change.

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Separate the Question by Facility Type

A total ban on all grid-scale energy and data center facilities is a very different policy choice than a ban limited to utility-scale solar on prime farmland, or a moratorium on hyperscale data centers pending water infrastructure assessment. Counties should be precise about what they are excluding, why, and under what conditions an exclusion might be revisited.

VIII. Conclusion: The Ban Is a Last Resort, Not a First Response

A total county ban on grid-scale energy projects or data centers is legally defensible, practically justified, and civically appropriate — but only under specific conditions that most counties have not fully documented, and only when a regulated approval process with meaningful standards genuinely cannot protect the community's core interests.

The CSPM framework proposed here does not make that decision for any county. It creates a structure for making that decision honestly. Counties that score in the 80–100 range on the metric, with documented findings supporting each dimension score, have built a record that can withstand legal scrutiny and public accountability. Counties that score in lower ranges but still feel pressure to enact a ban should ask a harder question: is there something we have not yet been willing to put in an ordinance?

The strongest protection rural communities have against unwanted development is not a blanket prohibition. It is a set of standards so clear, so technically grounded, and so tightly tied to documented community values that the projects worth having will pursue approval and the projects that cannot meet the bar will self-select out. A ban is appropriate when those standards cannot be written because the county's constraints are genuinely unmitigable.

Build the standards first. Reach for the ban only if the standards are not enough.

About the Author

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This analysis is for informational and policy discussion purposes. It does not constitute legal advice. Counties considering ordinance development should engage qualified legal counsel with expertise in Idaho land use law.

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